RSA 16/2001
BEFORE
HON'BLE MR JUSTICE H N SARMA
Shri Shankar Chandra Paul
S/o Late Satish Chandra Paul
Village Nij-Joynagar, Ph. Jaynagar,
P.S. Silchar, District-Cachar, Assam.

& & & & & & & & &appellant

-Vs-

On the death of Girindra Mohan Das his legal heirs-
1. Smti. Makhan Bala Das,W/o late Girindra Mohan Das
2. Smti. Anjali Rani Das,
3. Smti. Archan Rani Das,
4. Shri Shankar Das,
5. Shri Bhaskar Das,
6. Smti. Arpana Rani Das,
7. Shri Dibakar Das (Minor),
Sl. Nos. 2-7 are sons and daughters of
Late Girindra Mohan das,
8. Smti. Sukla Bala Das, W/o Late Girindra Mohan Das.
The minor respondent No.7 is represented by his elder sister
Smti. Arpana Rani Das, respondent No.6.
All are residents of Village : Nij-Jaynagar,
Pargana: Jaynagar, P.S. Silchar,
Dist. Cachar, Assam.

& & & & & & & & &Respondents

P R E S E N T
THE HON'BLE MR. JUSTICE HN SARMA

For the appellant : Mr. N Choudhury, Advocate

For the respondents : Mr. M. Singh, Advocate
Date of hearing and
Judgment : 29.04.10

JUDGMENT AND ORDER (ORAL)

Being aggrieved by the judgment and decree passed in T.A. No. 47/96 by t he learned Civil Judge (Sr. Division) No.2, Cachar at Silchar dismissing the a ppeal and affirming the judgment and decree passed in Title Suit No. 86/92 by th e learned Civil Judge (Jr. Division) No.2, Silchar at Cachar vide order dated 3 0.7.96, the present appeal has been preferred by the defendant.

2. I have heard Mr. N. Choudhury, learned counsel for the defendant appella nt as well as Mr. Singh, learned counsel appearing for the plaintiff respondent.

3. The pleaded case of the plaintiff interalia is that he sold the suit lan d to the defendant on 15.7.87 by executing a sale deed in consideration of Rs. 10,000/- and handed over the possession of the same. On the same date, however, a separate agreement was executed between the plaintiff and the defendant to the effect that the defendant would transfer the said land in favour of the plainti ff, if he return back the consideration money of Rs. 10,000/- within five years and defendant would deliver the possession of the same. In the said agreement it was also stipulated that in terms of the agreement it would be binding upon the heirs of the respective parties. The said agreement was registered as Deed N o. 3938 dated 16.7.87 in the office of the Sub-Registrar, Sadar Silchar. In ter ms of the aforesaid agreement the plaintiff demanded the defendant to sale the s

chedule land within the stipulated time on receipt of the consideration money of Rs. 10,000/- and retransfer the land. But the same having been refused to retur n a pleader notice was served upon the defendant but the in spite of the said notice the defendant did not come to execute the sale deed nor the defendant pa id any heed to the same. Ultimately, the plaintiff filed a suit for specific per formance of the said agreement and to execute the sale deed in terms of the agre ement. Upon receipt of the consideration money of Rs. 10,000/- summons have been served to the defendant.

4. The defendant contested the suit by filing written statement contending interalia that the plaintiff, being in need of money, approached the defendant to sale his right of conveyance under the agreement (Ekrarnama) and accepted a sum of Rs. 5,000/- and proposed to execute the necessary agreement to that effec t but in the meantime he, having been expired, the predecessor-in-interest file d a suit for recovery of the same. It is specifically stated that the agreement executed on 15.7.87 stood modified by oral contract between the parties and acco rdingly, the plaintiff is not entitled to any relief. On the basis of the pleadi ngs of the parties, the following issues are framed :

1. Is there any cause of action for the suit ?
2. Whether the suit land is properly described ?
3. Whether the predecessor -in-interest of the plaintiffs sold a portion of his homestead that to the defendant by executing a registered sale deed on 15.7.87 and if so, whether the defendant also executed an Ekrarnama on the same day prom ising to re-transfer the said land and if so whether the defendant is legally bo und to re-transfer the suit land or not ?
4. Whether the predecessor-in-interest of the plaintiff sold his right of reconv enayce in respect of the suit land to the defendant ?
5. Whether the plaintiffs are entitled to get a decree as prayed for ?

5. In support of the case, the plaintiff examined two PWs whereas defendan t examined three DWs. At the end of the trial, the learned trial court decreed t he suit in favour of the plaintiff vide judgment and decree dated 30.7.96 which was carried into an appeal and the same was registered as T.A. No. 47/96 in the court of learned Civil Judge (Sr. Division), No.2, Cachar at Silchar and the le arned appellate court vide impugned judgment and decree dated 10.11.2000 dismiss ing the appeal affirmed the order passed by the learned trial court.

6. The appeal was admitted to be heard on the following substantial questi on of law :

Whether the right of the plaintiffs to get reconveyance has been extin guished due to subsequent oral agreement for sale of the said right of reconvey ance upon receipt of the full consideration of Rs. 5000/- in presence of DW 2 a nd DW 3 ?

7. In support of his contention, Mr. Choudhury submits that while discussin g related issue No.4, learned court below having been found that the defendant could prove by clear and cogent evidence that the plaintiff received a sum of Rs . 5,000/- and agreed to execute a deed of agreement in favour of the defendant, both the court below committed error of law in passing the impugned judgment and decree on the agreement dt. 15.7.87 superseding the subsequent agreement. The learned counsel further submits that the plaintiff having received an amount of Rs. 5,000/- thereby selling the right of reconveyance in favour of the defenda nt, the present suit is filed inasmuch as he has waived his right reserved by t he agreement dated 15.7.87.

8. Mr. M. Singh, learned counsel for the plaintiff respondents , however, s ubmits that there having no separate written agreement in support of the claim o f the defendant, upon receipt of Rs. 5,000/-, the subsequent agreement would n ot be binding between the parties. It is further contended that the terms of the

agreement dated 15.7.87 having been reduced into writing, it cannot be waived o r rescinded by any subsequent oral agreement.

9. I have considered the submissions so made by the learned counsel for the parties.

10. The basic facts needed for necessary disposal of the appeal appears to b e not in dispute. The predecessor-in-interest of the plaintiffs sold the portion of his homestead land by a registered sale deed in favour of the defendant on 1 5.7.87 in consideration of a sum of Rs. 10,000/- and handed over the possessio n thereof to the defendant. The defendant, on the same date i.e., on 15.7.87 its elf, executed the deed of agreement (Ekrarnama) in favour of the plaintiff prom ising to re-transfer the said land to the defendant, if the defendant pays the c onsideration amount within five years. The said agreement was exhibited as Exbt. 1. It is specifically mentioned that the terms of the agreement, Ext.1 would bi nd the respective heirs of the parties. The original plaintiff Girindra Mohan Da s died on 13.5.88. The plaintiff made demand for getting back the transferred la nd in their favour by executing a deed accepting the sum of Rs. 10,000-/ as per terms and conditions of the agreement. To that effect, the plaintiff also issue d notice to the defendant which is duly admitted to have been recalled by the d efendant vide Exbt. 3. It is also proved that defendant paid Rs. 5,000/- to the plaintiff on the proposition of the plaintiff to relinquish his right to execute the agreement. However, before the execution of the necessary agreement to tha t effect the plaintiff expired and no such deed of agreement could be executed by the plaintiff in favour of the defendants in terms of the oral agreement.

11. As indicated above, the Exbt.1, the deed of agreement (Ekrarnama) was ex ecuted on 15.7.87 and the same was duly registered in the Office of the Joint Su b-Registrar, Silchar on 16.7.87. The plaintiff has sought for execution of the c ontract entered into between the parties by way of specific performance. No any other deed canceling the Exbt.1 has been executed or registered.

12. Section 91 of the of the Evidence Act provides that when the terms of a contract, or of a grant, or of any other disposition of property, have been redu ced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in pr oof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence id admissible under the provisions hereinbe fore contained. However, there are exception to Section 91 of the Evidence Act w hich is not applicable in the instant case.

13. Section 92 provided that when the terms of any such contract, grant or o ther disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the Section 91 of the Evidenc e Act, no evidence of any oral agreement or statement shall be admitted, as betw een the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, addition to, or subtracting from, its te rms. Under Section 92 there are five proviso in the form of exception and those provisos are not attracted in the facts of the present case.

14. In view of the above specific statutory provisions, the evidence adduced by the defendant to the effact that there was a oral contract between the parti es to sell the right of reconveyance in favour of the defendant in derogation t o the agreement, Exbt.1 is admitted, that would amount to varying and or subtra cting the terms of the Exbt. 1 and such evidence in the form of oral agreement are not admissible. The defendant might have proved certain facts orally in his deposition through DWs subtracting from the terms of the agreement contained in Exbt.1 but in the absence of any written document, the defendants are not entitl ed to take aid of the expressed terms contained in Exbt.1 which is a registered

document., in view of the principle laid down in Section 91 of the Evidence Act.

15. In view of the above discussion, the substantial question of law so framed is answer in the negative and in favour of the respondents.

16. Consequently, appeal stands dismissed.

17. Interim order dated 16.2.01 stands vacated.